

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION**

<b>UNITED STATES OF AMERICA,</b>	)	<b>Criminal Case No. 3:08cr00042-1</b>
	)	
<b>v.</b>	)	<b><u>MEMORANDUM OPINION</u></b>
	)	
<b>TONY LLOYD JOHNSTON.</b>	)	<b>By: Norman K. Moon</b>
	)	<b>United States District Judge</b>

Tony Lloyd Johnston, a federal inmate proceeding *pro se*, filed a motion “for miscellaneous relief” asking the court to vacate his 2009 conviction and sentence. Because Johnston is challenging the validity of his federal conviction and sentence, the court construes Johnston’s motion as a motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. Upon review of the record, however, the court finds that the § 2255 action must be dismissed as successive.

**I.**

Johnston challenges his 228-month sentence for possessing with intent to distribute at least 5 grams of crack cocaine, in violation of 21 U.S.C. § 841(b)(1)(B); being a felon in possession of a firearm, in violation of 18 U.S.C. §§ 922(g)(1), 924(a)(2), and 924(e); and using or carrying a firearm in relation to a drug crime, in violation of 18 U.S.C. § 924(c). Court records indicate that Johnston previously filed a § 2255 motion regarding the same conviction and sentence which this court denied. See Docket Nos. 71, 89, and 90. This court may consider a second or successive § 2255 motion only upon specific certification from the United States Court of Appeals for the Fourth Circuit that the claims in the motion meet certain criteria. See § 2255(h). As Johnston has not submitted any evidence of having obtained certification from the

Court of Appeals to file a second or successive § 2255 motion, the court must dismiss his motion as successive.<sup>1</sup>

### III.

For the reasons stated, the court construes Johnston's motion as a § 2255 motion and dismisses it as successive.

**ENTER:** This 23rd day of August, 2012.

  
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NORMAN K. MOON  
UNITED STATES DISTRICT JUDGE

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<sup>1</sup> Petitioner is hereby advised of the procedure for obtaining certification from the United States Court of Appeals for the Fourth Circuit to have this court review a successive § 2255 motion. Petitioner must submit a copy of the successive § 2255 motion to the Court of Appeals, along with a motion requesting a three-judge panel certification that the district court may review the successive § 2255 motion. See 28 U.S.C. § 2244 (as amended, 1996). A Fourth Circuit form and instructions for filing this motion will be included with this notice or are available from the Fourth Circuit at the following address: Office of the Clerk, United States Court of Appeals for the Fourth Circuit, 900 E. Main St., Richmond, VA 23219.